IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9312 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

STATE TRANSPORT EMPLOYEES UNION

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/03/2000

C.A.V JUDGEMENT

Heard learned advocate Mr. N.K Pahwa for the petitioner and learned advocate Mr. J.S Brahmbhatt for the respondent-Union.

2. The brief facts of the present writ petition are as under :-

3. The member of respondent-Union viz., J.K Athiya [hereinafter referred to as, `the workman'] was working as a Conductor with the petitioner-Gujarat State Road Transport Corporation [hereinafter referred to as, `the Corporation']. While he was on duty, on 29th January, 1987 from Vagoriya to Nyay Mandir, his bus was checked by the Checking Staff of the petitioner-Corporation. The allegation was made against the workman that inspite of collecting fare from six passengers, no tickets were issued to these passengers upto the checking point. The petitioner-Corporation has served a chargesheet No. 15 of 1987 upon the workman, and thereafter, departmental inquiry was initiated against him and after completion of the departmental inquiry, the workman was dismissed from service. The said dismissal order was challenged by the respondent-workman in Departmental First Appeal. In the First Appeal, the Appellate Authority modified the punishment and substituted the punishment to that of demoting the workman J.K Athiya to the original time scale. The First Appellate Authority has also not granted any backwages for the interim period from the date of dismissal to that of reinstatement. The First Appellate Authority has granted reinstatement with continuity of service without backwages to put him in minimum time scale of Conductor. The workman has raised an industrial dispute through the respondent-Union challenging the order of punishment and denying the backwages by the first appellate authority under the provisions of the I.D Act. The said matter was referred for adjudication to the Industrial Tribunal, Vadodara being Reference No. IT 92 of 1991.

Before the Industrial Tribunal, the respondent Union has filed statement of claim and petitioner-Corporation has filed written statement and produced the documentary evidence on record, and thereafter, the matter was heard on merits by the Industrial Tribunal. The Industrial Tribunal has considered the facts that the bus was local and bus was checked within 1 and half km. between 4 and 5 stage and respondent-workman was doing road-booking and in the meanwhile, the bus was checked by the Checking Staff and that the checking staff has restrained the respondent workman from issuing further tickets, and therefore, the said incident has occurred wherein six passengers were found without tickets, though fare was collected by the respondent-workman. Though, this fact of collecting fare was disputed by the respondent-workman that the bus was late by 1 and half hour and that bus was hurriedly started by the driver, and therefore, during the

road-booking the bus was checked and the passengers, being afraid of fine, gave wrong statement of their having given the fare amount. Considering all these aspects, the Industrial Tribunal has decided the question whether looking to the misconduct in question the punishment of putting the the Conductor in the minimum time scale is disproportionate or not. The said question has been examined in detail by the Industrial Tribunal and ultimately the Tribunal has come to the conclusion that the said punishment imposed by the First Appellate Authority is harsh and unjust. Therefore, while exercising powers under Section 11-A, the Industrial Tribunal has modified the order passed by the First Appellate Authority and directed the petitioner Corporation to reinstate the workman to his original post by stopping two increments with permanent effect and granted backwages from 8th September, 1988 till the date of his resuming duty. The Industrial Tribunal has delivered the Award on 29th September, 1997.

Learned advocate Mr. Pahwa has made two fold submissions. Firstly, that the Industrial Tribunal, Vadodara has no powers to modify the punishment other then those of dismissal or discharge from service and the learned Tribunal has no jurisdiction to substitute or reduce the punishment while exercising powers under Section 11-A of the ID Act. Secondly, the Industrial Tribunal has committed error in granting arrears of pay and other benefits with retrospective effect ie., 8th September, 1988 and whereas the Reference was made to the Tribunal on 18th June, 1991. On the otherside, learned counsel appearing for the respondent-Union has pointed that the Industrial Tribunal has not committed any error and has sufficient powers to modify the punishment in terms of the reference which has been referred to it by the State Government for adjudication.

I have considered the submissions made by the rival parties. The Industrial Tribunal derives jurisdiction from the terms of reference itself which has been referred to it under Section 101, Sub-clause 1 of the Industrial Disputes Act, 1947. The said Terms of Reference have been quoted and referred to in the Award itself at Page 7 of the petition, which reads as under:-

> `Whether the order demoting the Conductor of Double-Decker Depot Bus Shri J.K Athiya putting him in the minimum time scale of a Conductor is required to be set-aside or not ? and whether the workman is entitled to any difference of salary and costs or not ?"

The said terms by itself suggests that the Industrial Tribunal has powers to adjudicate the said dispute on merits and if the Industrial Tribunal comes to the conclusion that the punishment in question is disproportionate and harsh then it has jurisdiction to interfere with the punishment by way of modifying the same, according to its discretionary powers. This aspect has been considered by the Division Bench of this Court in the matter of Municipal Commissioner, Baroda v. Sanatkumar D. Brahmbhatt [1992 (1) GLR 432] wherein the very nature of question was raised. The facts of that case are - the dispute which was adjudicated by the Industrial Tribunal, reached to the conclusion that looking to the charges which were proved, punishment of stoppage of three yearly increments with future effect would be too harsh and consequently, punishment of stoppage of one yearly increment without future effect was substituted. This was the order passed by the Industrial Tribunal wherein the contention was raised by the learned advocate appearing for the petitioner-Vadodara Municipal Corporation that on the express language of Section 11-A of the Act, such controversy could not be covered by the said provision relating to only discharge or dismissal of a workman. The answer has been given by the Division Bench of this Court that, ..`however, on the facts of the present case, the very dispute which is referred to the Industrial Tribunal for adjudication centres around the legality and propriety of the imposition of punishment of stoppage of three yearly increments with future effect. Once that dispute is referred for adjudication, the Industrial Tribunal in exercise of its power under Section 11A was bound to adjudicate upon that dispute and pronounce upon it. The term, `Industrial dispute' is defined by Section 2 (k) to mean any dispute or difference between employers and employers or between employers and workmen. It cannot be gainsaid that there is difference or dispute between the employer and employee in connection with the punishment imposed on the workman. Therefore, de hors Section 11A, the legality and impropriety of the punishment had to be examined by the Industrial Tribunal while adjudicating this very dispute which was referred for adjudication. Consequently, when the Industrial Tribunal considered the gravity of the punishment in the light of the charges having been held proved, it cannot be said that it was exercising jurisdiction not vested in it. In fact, it was its obligation to adjudicate this very dispute which was referred for adjudication.'

Similarly, the very question has been examined by

the other Division Bench of this Court in the matter of Gujarat State Road Transport Corporation v. Prabhashanker K. Acharya, reported in 1992 (2) GLH p-354. While dealing with the same contention raised by the learned counsel for the petitioner-Corporation, the Division Bench, in paragraph 19 of its judgment has observed as under :-

> "19. The submission of Shri Shelat, learned advocate for the management that the Tribunal has no jurisdiction at all to interfere with the order in inquiry in which the punishment other than that of the discharge or dismissal is imposed, cannot be accepted. Shri Shelat submits that provisions of Section 11 A of Industrial Disputes Act only empowers the Tribunal to interfere with the order in which the punishment of discharge or dismissal is imposed and in no other order in which the other punishment is imposed. There is no provision under the Act prohibiting the Tribunal in exercising the jurisdiction except in the case of punishment of discharge or dismissal. We have extensively discussed the provisions of Section 7, 7A and 15 and the Schedule, and it is evident that the Tribunal has jurisdiction even to interfere with the order imposing the punishment other than that of discharge or dismissal. Even prior to the incorporation of Section 11A, Industrial Tribunal Act, the jurisdiction of the Tribunal to interfere with the order of punishment is recognized and accepted by the courts, of course, that is only under certain circumstances as discussed above. The acceptance of the submission would lead to absurd results and even in case of punishment other than that of discharge or dismissal which may lead to victimization, the Tribunal will not be in a position to interfere and give proper justice to the workman."

In view of the aforesaid two decisions of the Division Bench of this Court, the question now does not survive further, and therefore, according to my opinion, the Industrial Tribunal has powers to modify or substitute the punishment in case Tribunal comes to the conclusion that the punishment in question is harsh, unjust and arbitrary. Therefore, the learned Tribunal has rightly exercised its jurisdiction and interfered with the punishment.

Now the question is required to be examined in respect to the second contention that Tribunal has directed payment of difference of salary with effect from 8th September, 1988 though the dispute has been referred to it on 18th June, 1991. Therefore, to that extent, the submission of Mr. Pahwa is required to be considered in light of the fact that once the punishment order which was passed by the Appellate Authority dated 8th September, 1988 which was challenged by the respondent workman through Union and referred for adjudication on 18th June, 1991, therefore, the respondent-workman is not entitled to any difference of wages and benefits from 8th September, 1988 to 18th June, 1991 because during this period, the respondent workman has not challenged the very punishment order and remained silent. Therefore, the respondent workman is not entitled to difference of salary/wages and other benefits from 8th September, 1988 to 8th June, 1991. Considering this submission, the award passed by the Industrial Tribunal is required to be modified, and accordingly the same is hereby modified in respect of the direction of arrears and other benefits. It appears that the Industrial Tribunal has not considered the fact that the respondent workman has raised the dispute after a period of about three years, and therefore, the workman should not be held to be entitled to get the benefit of his own delay. Accordingly, the Award dated 29th September, 1997 made on Reference (IT) No. 92 of 1991 is hereby modified as under :-

The punishment imposed by the First Appellate Authority to put in the respondent-workman in the minimum time scale to the post of Conductor category is hereby quashed and aside, and instead of that it is substituted to that of stoppage of two yearly increments with future effect. Due to this substitution and modification of the punishment, the respondent-workman is entitled to difference of salary and other benefits with effect from 18th June, 1991 and this arrears of wages and benefits are required to be paid by the petitioner-Corporation to the respondent workman within a period of two months from the date of receipt of certified copy of this order.

Petition is allowed according to that extent. There shall be no order as to costs.

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Prakash*